UNITED STATES OF AMERICA DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States)	
Department of Housing and Urban)	
Development, on behalf of Gary F. Jones)	
and Stefanie Jones,)	
)	
Charging Party,)	
)	
V.)	FHEO No.: 07-04-0396-8
)	
Patsy Wade and Milton Wade,)	
)	
Respondents.)	
)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about February 26, 2004, Complainant Gary Jones, aggrieved person, filed a verified complaint with the U.S. Department of Housing and Urban Development (HUD), alleging that Respondents Patsy¹ and Milton Wade committed discriminatory housing practices on the basis of race (Black)(Association) in violation of Section 3604(b) of the Fair Housing Act as amended in 1988, 42 U.S.C. §§ 3601 *et seq.* (2004) (hereafter, the "Act"). Complainant's wife, Stefanie Jones, and daughter, Andrea Jones, were named as aggrieved persons. On or about August 26, 2004, the complaint was amended to allege that Respondents violated Sections 3604(a), (b), and (c) of the Act on the basis of race (African American) and color (Black) and to remove Andrea Jones, Complainant's daughter, as an aggrieved person.

The Act authorizes the issuance of a Charge of Discrimination (Charge) on behalf of an aggrieved person following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. § 3610(g)(1) and (2) (2004). The Secretary has delegated to the General Counsel (54 Fed. Reg. 13121 (Mar. 30, 1989)), who has redelegated to the Regional Counsel

¹ The original complaint and amended complaint indicate Respondent's name is "Patricia Wade" d/b/a Wade Rentals. However, during Respondent's interview on September 15, 2004, she indicated that her name on her social security card was "Patsy" though she normally went by the name of "Pat L. Wade." Respondent Patsy Wade has received notification of the complaint, has not challenged the use of the name "Patricia," and has had the opportunity to fully participate in interviews, conciliation efforts, and the investigative process.

(67 Fed. Reg. 44234 (Jul. 1, 2002)), the authority to issue such a Charge, following a determination of reasonable cause by the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) or her designee.

By Determination of Reasonable Cause of September 29, 2004, the Director of the Kansas City Fair Housing HUB, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, has determined that reasonable cause exists to believe that discriminatory housing practices have occurred in this case based on race and color and has authorized and directed the issuance of this Charge of Discrimination.

II. SUMMARY OF THE ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned complaint and as set forth in the aforementioned Determination of Reasonable Cause, Respondents are charged with discriminating against the Complainant based on race and color in violation of 42 U.S.C. §§ 3604(a), (b), and (c) (2004) of the Act as follows:

A. Applicable Federal Law

- 1. It is unlawful to make unavailable or deny a dwelling to any person because of race or color. 42 U.S.C. § 3604(a) (2004); 24 C.F.R. §§ 100.50(b)(3) and 100.60(b)(5) (2004).
- 2. It is unlawful to discriminate against any person in the terms, conditions, or privileges of rental of a dwelling because of race or color. 42 U.S.C. § 3604(b) (2004); 24 C.F.R. § 100.65(a) (2004).
- 3. It is unlawful to make any statement with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on race or color, or an intention to make any such preference, limitation, or discrimination. 42 U.S.C. § 3604(c) (2004), 24 C.F.R. § 100.75 (2004).

B. Background

- 4. Complainant is a 49-year-old Black, African American male employed by the Department of the Army as a police officer at Fort Leavenworth, Kansas. He is married to Stefanie Jones, an aggrieved person, who is a 47-year-old Caucasian female of German descent.
- 5. Respondent Patsy Wade, a Caucasian female, is married to Respondent Milton Wade, a Caucasian male. Respondents, who have owned and managed rental properties for approximately 31 years, currently own five rental properties, all located in Leavenworth, Kansas. Three of the rental properties are single-family units, one rental property is a duplex, and the other rental property is a three-unit apartment building.

- 6. Until leasing to Complainant in February 2004, Respondents have had no Black or African American tenants since approximately March 1998.
- 7. The property at issue is Apartment #2 of Respondents' three-unit apartment building located at 115 Seneca, Leavenworth, Kansas (subject property). Two apartments, including Apartment #2, are located on the lower floor of the building, and one apartment is located on the upper floor. The building has thin walls and flooring, and noise travels easily throughout the building.
- 8. Complainant, formerly of Junction City, Kansas, was scheduled to begin his new position as a federal civilian police officer at Ft. Leavenworth, Kansas on or about February 23, 2004. As a result of Complainant's impending job change, Mrs. Jones contacted Respondent Patsy Wade on or about February 18, 2004, about a rental unit advertised on the Fort Leavenworth, Kansas Housing Office's Internet website.
- 9. Mrs. Jones traveled to Leavenworth, Kansas by herself on February 19, 2004, and met with Respondent Milton Wade to view the subject property. Mrs. Jones signed a six-month lease, and Respondent Milton Wade provided her the key to the unit. Respondents never met Complainant prior to his wife signing the lease.
- 10. Before and after Mrs. Jones returned to Junction City, Respondents made several phone calls to the Complainant's home in Junction City from February 19 through February 23, 2004, to coordinate various rental issues. Complainant's voice message was on the family's answering machine and voice mail. Respondent Patsy Wade admits Complainant answered the phone on one occasion when she called though she stated most of the time the answering machine or voice mail picked up when she called.
- 11. Before Complainant moved into the unit, Respondent Milton Wade called Norm Bentley (Caucasian), a long-term tenant in Apartment #3 of the subject property and informed Mr. Bentley he had recently rented Apartment #2. He further told Mr. Bentley they had called the new tenant's house and thought the tenant was Black.
- 12. Complainant moved into his new unit on or about the evening of February 23, 2004, the day he started his new job at Ft. Leavenworth. After work and upon his arrival at his new apartment at approximately 7:30 or 8:00 p.m., he quickly moved his items, including several suitcases, a TV and VCR, a small clock radio, a lightweight table, and some canned goods and other food items, into the apartment. At the time of his move in, Complainant walked throughout the new apartment in his cowboy boots.
- 13. After watching part of a movie and eating, Complainant talked on the phone and then went to bed at about 9:30 p.m. At no time did Complainant have guests at his unit. He awoke for work to the buzz of the alarm on his clock radio at approximately 5:30 a.m. the next day, February 24, 2004. Complainant left for work at approximately 7:30 a.m.

- 14. Later that day, Mr. Bentley contacted Respondent Patsy Wade and informed her the new tenant had talked loudly the previous night and had played music that morning. He also told her he had heard the new tenant's loud footsteps that morning. Mr. Bentley told the FHEO investigator that when he contacted Respondent Patsy Wade, he may have described the new tenant as the "Black guy downstairs."
- 15. After Complainant arrived for work on February 24, 2004, Respondent Patsy Wade called him at approximately 1:30 p.m. on the phone of Captain James Dyson (Caucasian), Complainant's second level supervisor. Complainant spoke with Respondent Patsy Wade in the presence of Captain Dyson and Lieutenant Domenick Tavano (Caucasian), Complainant's immediate supervisor. During the phone call, Respondent Patsy Wade yelled loudly at Complainant and angrily accused him of having a party and making too much noise in his unit. She told him he had violated his lease and informed him he would have to find another place to live. She went on to say she wanted him to leave immediately, thereby terminating his lease. Complainant denied these accusations and informed Respondent Patsy Wade that he was an older man and he did not have parties and make noise.
- 16. At the time Respondents terminated Complainant's lease, they knew or suspected that he was Black.
- 17. Prior to calling Complainant, Respondent Patsy Wade had called Mrs. Jones in Junction City. In doing so, she informed Mrs. Jones that Complainant was up all night having people over and having a party. She went on to say Mrs. Jones had not told her Mrs. Jones was married to a man like that and all they did was smoke dope and have parties. Mrs. Jones hung up on Respondent Patsy Wade.
- 18. On or about February 25, 2004, Respondent Milton Wade called Complainant at work and told him to leave his keys in the apartment. When asked the basis for eviction, Respondent Milton Wade said it was because Complainant was too noisy and other tenants had complained. Complainant moved his belongings out of the apartment and placed the apartment keys on the kitchen counter immediately after he left work on February 25, 2004.
- 19. Although Respondents did contact Mr. Atchley (Caucasian), the tenant in Apartment #1, regarding alleged noise from the Complainant's unit, they did not do so until after 6:00 p.m. on February 24, 2004, after Respondent Patsy Wade terminated Complainant's lease. The only tenant to complain about Complainant's alleged noise prior to Respondents terminating Complainant's lease was Mr. Bentley.
- 20. Prior to terminating Complainant's lease, Respondents had not terminated a tenant's lease for thirty years, to include those tenants accused of noise violation(s).
- 21. Respondents' practice was to issue lease violations verbally, asking tenants to rectify the problem. At no time prior to terminating Complainant's lease did Respondents give the Complainant the opportunity to modify his alleged behavior.

- 22. Subsequent to terminating Complainant's lease, Respondents rented the subject property to Adrian Mathew Welch (Caucasian).
- 23. Respondents have had at least twenty-nine tenants residing for various lengths of time in their eight apartment units since early 1998. Of those twenty-nine tenants, twenty-six were Caucasian, two were Hispanic, one was East Indian, and zero were Black or African American.

C. Fair Housing Act Violations

- 24. By terminating Complainant's lease because Complainant was a Black, African American, Respondents made his unit otherwise unavailable in violation of 42 U.S.C. § 3604(a) (2004); 24 C.F.R. § 100.50(b)(3) and 100.60(b)(5) (2004).
- 25. By terminating Complainant's lease and not terminating the lease of any non-Black renter for over 30 years, Respondents unlawfully discriminated against Complainant by applying different terms and conditions based on his race and color in violation of 42 U.S.C. § 3604(b) (2004); 24 C.F.R. § 100.65(a) (2004).
- 26. By not following their established practice of issuing verbal lease violations and giving tenants the opportunity to rectify their alleged behavior, Respondents unlawfully discriminated against Complainant by applying different terms and conditions based on his race and color in violation of 42 U.S.C. § 3604(b) (2004); 24 C.F.R. § 100.65(a) (2004).
- 27. By making statements to Mrs. Jones with respect to the rental of a dwelling that indicated a preference, limitation, or discrimination because of race and color, or an intention to make any such preference, limitation, or discrimination, Respondents violated 42 U.S.C. § 3604(c) (2004); 24 C.F.R. § 100.75 (2004).
- 28. As a result of Respondents' actions, Complainant and Mrs. Jones, an aggrieved person, suffered damages, including emotional distress, embarrassment, humiliation, inconvenience, and economic loss, to include additional moving expenses, transportation costs, and additional housing costs.

III. <u>CONCLUSION</u>

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of the General Counsel, and pursuant to 42 U.S.C.\\$3610(g)(2)(A) (2004) of the Act, hereby charges Respondents with engaging in discriminatory housing practices in violation of Sections 3604(a), (b), and (c) of the Act, and prays that an order be issued that:

1. Declares that the discriminatory housing practices of the Respondents, as set forth above, violate the Act, 42 U.S.C. §§ 3601 *et seq.* (2004);

- 2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them from discriminating because of race and/or color against any person in any aspect of the sale or rental of a dwelling;
- 3. Awards such damages as will fully compensate the Complainant and Mrs. Jones, an aggrieved person, for their emotional distress, embarrassment, humiliation, inconvenience, and economic loss caused by Respondents' discriminatory conduct pursuant to 42 U.S.C. § 3612(g)(3) (2004); and
- 4. Awards an \$11,000 civil penalty against each Respondent for each violation of the Act that Respondents are found to have committed pursuant to 42 U.S.C. § 3612(g)(3) (2004).

The Secretary of HUD further prays for additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3) (2004).

Respectfully submitted,

Thomas J. Coleman Regional Counsel, Region VII

Gayle E. Bohling Deputy Regional Counsel, Region VII

Katherine A. Varney, Attorney-Advisor U.S. Department of HUD Region VII Office of Counsel 400 State Avenue, Room 200 Kansas City, KS 66101-2406

Telephone: (913) 551-5549 Fax: (913) 551-5857

Date: September 29, 2004